

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	Civil Action No. _____
)	
v.)	
)	<u>COMPLAINT</u>
)	
BATH & BODY WORKS, LLC)	<u>Jury Trial Demanded</u>
)	
Defendant.)	
_____)	

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990, (“ADA”) and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of disability discrimination and to provide appropriate relief to Jennifer Tvinnereim. As alleged with greater particularity in paragraphs 12 - 14 below, Defendant, Bath and Body Works, LLC (“Defendant” or “Bath and Body Works, LLC”), discriminated against Tvinnereim (in violation of the ADA) by failing to provide a reasonable accommodation and by reducing her hours in response to the request for a reasonable accommodation; and, by ultimately, constructively discharging her because of her disability.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C.

§ 12117(a), which incorporate by reference Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The unlawful acts alleged below were committed within the jurisdiction of the United States District Court for the District of Minnesota.

PARTIES

3. Plaintiff, Equal Employment Opportunity Commission (“EEOC” or “Commission”), is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title I of the ADA, and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant has continuously been a Delaware LLC doing business in the State of Minnesota and the City of Minnetonka and has continuously had at least fifteen (15) employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7). At all relevant times, Defendant has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

ADMINISTRATIVE PROCEDURES

6. More than 30 days prior to the institution of this lawsuit, Tvinnereim filed a charge with the EEOC alleging violations of Title I of the ADA by Defendant.

7. On December 20, 2017, the EEOC issued to Defendant a Letter of Determination finding reasonable cause to believe that the ADA was violated and inviting Defendant to join with the Commission in informal methods of conciliation to endeavor to eliminate the unlawful employment practices and provide appropriate relief.

8. The Commission engaged in communications with Defendant to provide Defendant the opportunity to remedy the discriminatory practices described in the Letter of Determination.

9. The Commission was unable to secure from Defendant a conciliation agreement acceptable to the Commission and on March 21, 2018, the EEOC issued to Defendant a Notice of Failure of Conciliation.

10. All conditions precedent to the institution of this suit have been fulfilled.

STATEMENT OF CLAIMS

11. Ms. Tvinnereim is a qualified individual with a disability under Sections 3 (1) and 101(8) of the ADA, 42 U.S.C. §§ 12102(1) and 12111(8). Tvinnereim has long been diagnosed with diabetes, and later depression. In 2011, she was diagnosed with retinopathy. In 2012, retinal reattachment surgery was performed on her left eye, and though a “clinical success,” her vision is

significantly impaired. In 2015, Tvinnereim was legally blind in her left eye and the vision in her right eye fluctuated from clear vision to no vision.

12. In April of 2014, Tvinnereim was hired by Defendant as a Sales Associate, later became a Sales Lead and was constructively discharged by Defendant on or about April 1, 2015.

13. At all relevant times, Tvinnereim could perform the essential functions of her position as a Bath and Body Work Lead Sales employee with reasonable accommodations and was a “qualified individual” within the meaning of Section 101(8) of Title I of the ADA, 42 U.S.C. § 12111(8).

14. Since at least February of 2015, Defendant has engaged in unlawful employment practices at its Minnetonka, Minnesota, facility, in violation of Section 102 of Title I of the ADA, 42 U.S.C. § 12112(a) and (b), by discriminating against Tvinnereim because of her disability. These unlawful employment practices include, but not limited to:

- a. In February of 2015, Ms. Tvinnereim requested an accommodation of a larger monitor at the cash register;
- b. After requesting the monitor, she was sent home early and then her scheduled hours were substantially reduced;
- c. She was never provided with the requested accommodation; and,
- d. As result, Ms. Tvinnereim resigned on April 1, 2015.

15. The effect of the practices complained of in paragraph 14 above has been to deprive Tvinnereim of equal employment opportunities and otherwise adversely affect her status as an employee because of her disability.

16. Bath and Body Works, LLC's acts as described in paragraph 14 were done intentionally.

17. Bath and Body Works, LLC's acts as described in paragraph 14 were done with malice or with reckless disregard of Tvinnereim's federally protected rights.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with Defendant, from engaging in any employment practices which discriminates on the basis of disability or retaliation.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for qualified individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant to make whole Tvinnereim by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices including, but not limited to, rightful place reinstatement.

D. Order Defendant to make whole Tvinnereim by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 14 above.

E. Order Defendant to make whole Twinnereim by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in paragraph 14 above, including, but not limited to, emotional pain, humiliation, and inconvenience in amounts to be determined at trial.

F. Order Defendant to pay Twinnereim punitive damages for its malicious and reckless conduct, as described in paragraph 14 above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the EEOC its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its Complaint.

Dated: September 26, 2018

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

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